

# State of California



## Fair Political Practices Commission

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January 14, 1985

James D. Boyd  
Executive Director  
Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

Re: Your Request for Advice  
Our File No. A-84-281

Dear Mr. Boyd:

This letter is sent in response to your request for advice on behalf of Peter Venturini, Chief of the Air Resources Board's Stationary Source Division (SSD) concerning his obligations under the conflict of interest provisions of the Political Reform Act.<sup>1/</sup> As I discussed with Mr. Venturini and Carolyn Small of your office, we can only give general guidance at this point since we were not presented with any specific pending decisions to analyze. Should specific decisions arise in the future, we would be happy to provide you with additional advice.

### FACTS

#### 1. Mr. Venturini's Financial Interests

My understanding of the basic facts from your letter are as follows. Mr. Venturini has a 24 percent interest in Venturini Associates Incorporated ("VAI"), a closely-held Subchapter S corporation. He serves as VAI's president and on its board of directors. Mr. Venturini's mother and sister are also shareholders and directors. The directors have appointed Mr. Venturini's father as the general manager of the corporation, and, in that role, he is in charge of the day-to-day operations of the company.

VAI is engaged in land-based oil and gas exploration and production. Presently its activities are primarily confined to Brentwood in Contra Costa County and other portions of the

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<sup>1/</sup> Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted.

San Francisco Bay Area.<sup>2/</sup> VAI operates by obtaining mineral leases and then forming limited partnerships or joint ventures with other investors for the production of the oil or gas. VAI treats and stores any oil and gas which is produced by the partnership. Equipment used for this purpose includes heaters, oil-gas separators, oil-water separators, storage tanks and compressors. VAI's fiscal year begins in March. During its first revenue-producing year, 1983-84, VAI had gross revenues of \$74,366 and net revenues of \$25,345.

In my conversations with Mr. Venturini and Ms. Small, I obtained the following additional information. VAI currently has only one oil well under production. This well is being produced by a limited partnership called Brentwood Drilling. VAI is the general partner in Brentwood Drilling and holds a 40 percent interest. Limited partners own the remaining 60 percent of Brentwood Drilling; VAI has an additional .5 percent interest as a limited partner. At the present time, Brentwood Drilling is selling oil to Shell Oil in the amount of \$2,000 to \$3,000 per month. Were additional oil to be discovered, Shell is likely to be Brentwood Drilling's primary customer; Shell would also be the most likely buyer of any gas discovered and produced through VAI's efforts.

## 2. Mr. Venturini's Role at the Air Resources Board

In your memorandum, you set forth all of the facts concerning the authority of the Air Resources Board, the local air pollution control districts, and the Stationary Source Division.

### DISCUSSION

I have separated my discussion into an analysis of Mr. Venturini's economic interests which give rise to possible disqualification and a review of the elements of a conflict of interest under the Act.

## 1. Mr. Venturini's Economic Interests

Section 87100 of the Political Reform Act prohibits public officials from making, participating in making, or in any way attempting to use their official positions to influence a

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<sup>2/</sup> All of these operations are located entirely within the Bay Area Air Quality Management District.

governmental decision in which they know or have reason to know they have a financial interest.

Financial interest is defined in Section 87103 as a foreseeable material financial effect of the decision on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

\* \* \*

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Since Mr. Venturini has an investment greater than \$1,000 in VAI, has received more than \$250 in income, and serves as an officer and director of the corporation, he must not make or participate in any decisions which could foreseeably have a material financial effect on VAI.

In addition, since Mr. Venturini has a greater than 10 percent interest in VAI, his investments include a pro rata share of investments held by VAI and a pro rata share of the income received by VAI. See Sections 82030 and 82034.<sup>3/</sup>

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<sup>3/</sup> "Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10 percent interest or greater. Section 82030. Section 82034 provides in pertinent part: "Investments of an individual includes a pro rata share of investments of any business entity, mutual fund, or trust in which the individual or immediate family owns, directly, indirectly or beneficially, a 10 percent interest or greater."

Assuming that VAI's investment in Brentwood Drilling exceeds \$4,167 and/or that VAI receives \$1,041 or more in income from Brentwood Drilling, Mr. Venturini's pro rata share (based on his 24 percent ownership interest in VAI) of the investment in Brentwood Drilling exceeds \$1,000 and/or his pro rata share of the income exceeds \$250.<sup>4/</sup> Accordingly, he must not participate in any decisions which could materially affect Brentwood Drilling.

Since the only source of income to Brentwood Drilling is Shell Oil, the question arises whether, under the Political Reform Act, Shell Oil will be considered a source of income to Mr. Venturini. As noted above, Mr. Venturini is considered to have a pro rata share of any investments held by VAI since he holds a 10 percent or greater interest in VAI. VAI has a 40.5 percent interest in Brentwood Drilling (the general partnership interest plus the limited partnership share). Based on these figures, Mr. Venturini has a 9.7 percent interest in Brentwood Drilling (24% of 40.5%). Since his interest in Brentwood Drilling is less than 10 percent, he does not have an interest in investments held by Brentwood Drilling nor in the income received by Brentwood Drilling. Accordingly, Shell Oil is not a source of income to him within the meaning of Section 87103(c), and he is not under an obligation to disqualify himself from participating in decisions which could materially affect Shell Oil.

## 2. Elements of a Conflict of Interest

### a. Making and Participating in Decisions

One of the major issues raised by your memorandum is the question of whether Mr. Venturini is making or participating in the decisions of the Board or local districts when he provides recommendations or advice. In your memorandum, you ask:

For example, in what instances, if any, does Mr. Venturini's role in ARB activities constitute making, participating in making or influencing a government decision? In particular, in the instances where Mr. Venturini provides recommendations, additional steps by other individuals or entities are necessary to give effect to those recommendations. In

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<sup>4/</sup> 24 percent of \$4,167 equals \$1,000, and 24 percent of \$1,041 equals \$250.

addition, many of Mr. Venturini's activities are subject to review by the ARB's Executive Office. Does this review constitute an intervening substantive review?

It appears that, in his role as chief of SSD, Mr. Venturini "makes" very few decisions within the meaning of Section 87100.5/. However, he participates in many decisions of the Board and the Executive Office. Commission regulation 2 Cal. Adm. Code Section 18700(c) states that a public official or designated employee participates in a governmental decision when, acting within the authority of his or her position, he or she:

(1) Negotiates, without significant substantive review, with a governmental entity or private person regarding the decision; or

(2) Advises or makes recommendations to the decision-maker, either directly or without significant intervening substantive review, by:

(A) Conducting research or making any investigation which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision; or

(B) Preparing or presenting any report, analysis or opinion, orally or in writing, which requires the exercise of judgment on the part of the official or designated employee and the purpose of which is to influence the decision.

It is clear that, under this definition, Mr. Venturini participates in Board and Executive Office decisions. "Significant intervening substantive review" of Mr. Venturini's advice and recommendations does not occur; this standard basically requires that someone else review the substance of an employee's work product and the basis of his or her recommendations. The Commission has consistently advised that

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5/ 2 Cal. Adm. Code Section 18700(b) defines making a decision as voting on a matter, appointing a person, obligating or committing the agency to a cause of action, or determining not to do any of these things.

high-level officials in a state agency "participate" in the decisions of that agency.

However, the local air pollution control districts are not a part of the Air Resources Board.<sup>6/</sup> The districts make autonomous decisions in their jurisdictions. While the ARB does have limited power to challenge certain district determinations, as a matter of policy and history, the ARB has not done so. Accordingly, we do not consider the decisions of the local districts to be decisions of the ARB, and Mr. Venturini is not participating in the decisions of the districts when he provides them with advice, information or recommendations. Thus he is free to continue in this role without analyzing the possible effects on his financial interests.

Under the current regulation, using one's official position to influence a decision is limited in its application to the official's own agency and those agencies over which the official's agency has appointive or budgetary control. 2 Cal. Adm. Code Section 18700(e). However, we have noticed a new regulation which extends the application of this principle to certain activities in front of any agency (copy of noticed 2 Cal. Adm. Code Section 18700.1 enclosed).

b. Foreseeable Material Financial Effect

Whether the effect of a particular decision is reasonably foreseeable depends on whether there is a substantial likelihood or probability that the effect will occur. Foreseeable effects include both those effects which are intended and those which are directly consequential upon the decision. It appears that Mr. Venturini participates in some decisions which might conceivably affect small oil and gas production companies such as VAI. These include the decisions concerning research, the development of suggested control measures, the review of district permits, other determinations on control technology, the toxic air contaminants program, and pending legislation. However, a mere possibility that, at some point, down the road, certain control technology which is developed for another reason may be required for use by companies like VAI is not enough to meet the foreseeability test. On the other hand, regulations, legislation or suggested control measures which only apply to companies such as VAI would foreseeably affect VAI.

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<sup>6/</sup> We have also treated the districts as separate entities for the purposes of the Act's lobbying provisions.

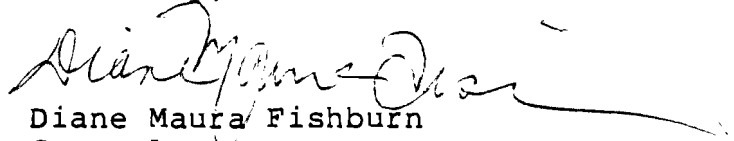
James D. Boyd  
January 14, 1985  
Page 7

As you know, the Commission has promulgated monetary guidelines on what constitutes a material effect on an economic interest. 2 Cal. Adm. Code Section 18702. (We have noticed recently a new regulation which substantially changes the materiality approach with respect to business entities. Copy of 2 Cal. Adm. Code Section 18702.2 enclosed.) For a business entity the size of VAI, the basic test is currently whether a decision will affect the annualized gross revenues by 1 percent or more. Normally if a matter involves the issuance of a permit or license for a business entity, the effect will be material. In addition, if a decision would require a business entity to substantially change its mode of operation or employ new equipment, the materiality test would probably be met. It is difficult to make generalizations regarding materiality. In the context of a specific decision, we would examine all of the relevant facts and, in conjunction with the analysis of foreseeability, determine whether the effect would also be material.

It appears that Mr. Venturini will be faced with some difficult determinations on possible conflicts of interest. There may also be an appearance problem for Mr. Venturini and the agency. We will assist in any way possible in the analysis of specific decisions as they arise.

Please feel free to contact me if I can be of further assistance.

Sincerely,



Diane Maura Fishburn  
Counsel  
Legal Division

DMF:plh  
Enclosures

# Memorandum

To : John Keplinger  
Executive Director  
Fair Political Practices Commission

Date : November 6, 1984

Subject: Request for  
Written Advice  
Pursuant to  
Government Code  
Section 83114

  
James D. Boyd  
Executive Officer  
From : Air Resources Board

Peter Venturini, Chief of the Air Resources Board's Stationary Source Division (SSD), holds an interest in Venturini Associates Incorporated (VAI), a corporation engaged in land-based oil and gas exploration and production, and serves as president of that corporation.

The Air Resources Board (ARB) hereby requests that the Fair Political Practices Commission (the Commission) issue written advice pursuant to Government Code Section 83114(b) with respect to any obligations Mr. Venturini may have under the Political Reform Act of 1974 (Government Code Section 81000, et seq.) as a result of his involvement in VAI. This memorandum also constitutes Mr. Venturini's request for written advice pursuant to that section.

In view of the general proscription of the Political Reform Act (Section 87100), that no official shall "make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest," we discuss below the activities of VAI and the nature and extent of Mr. Venturini's investment and involvement in that corporation. We also review briefly the authority of the Air Resources Board and local air pollution control districts with respect to entities involved in oil and gas exploration and production and their customers. In addition, we describe Mr. Venturini's responsibilities at the ARB and discuss generally the potential financial effect of those activities of the ARB in which Mr. Venturini is involved on VAI's operations.

We recognize that the considerations at issue in the determination of whether an officer or employee must disqualify himself under the Political Reform Act ultimately raise factual questions which must be addressed on a case-by-case basis. We do not, however, attempt in this discussion to quantify specifically the magnitude of any financial effect on VAI attributable to a particular decision which may be associated with Mr. Venturini's



activities at the ARB, as we believe that a number of legal questions precede this factual question. For example, in what instances, if any, does Mr. Venturini's role in ARB activities constitute making, participating in making or influencing a government decision? In particular, in the instances where Mr. Venturini provides recommendations, additional steps by other individuals or entities are necessary to give effect to those recommendations. In addition, many of Mr. Venturini's activities are subject to review by the ARB's Executive Office. Does this review constitute an intervening substantive review? The "intermediate" nature of some of Mr. Venturini's actions also gives rise to the question of when it becomes "reasonably foreseeable" that they may affect his financial interest. Additionally, in determining whether any financial effect is "material," which of the criteria in Section 18702, Title 2, California Administrative Code, are to be applied to an interest such as Mr. Venturini's investment and involvement in VAI? We seek the Commission's guidance with respect to these questions and, in addition, request that the Commission address any other questions it considers pertinent to this matter.

#### I. VENTURINI ASSOCIATES INCORPORATED

VAI holds and is engaged in efforts to discover and produce oil and gas on properties leased for these purposes. Presently, its activities are primarily confined to Brentwood (Contra Costa County) and other portions of the the San Francisco Bay Area, all located within the Bay Area Air Quality Management District (the district). Once a lease is obtained, a limited partnership or joint venture is formed and investors are sought. VAI serves as the general partner for these entities.

Oil and gas discovered is produced by the limited partnership and is treated and stored by VAI. Equipment used for this purpose includes heaters, oil-gas separators, oil-water separators, storage tanks and compressors. VAI does not itself refine the oil.

Mr. Venturini currently holds a 24 percent interest valued at between \$10,000 and \$100,000 in VAI, a Subchapter S corporation and serves as president and director of that corporation. Mr. Venturini's mother and sister are also shareholders and directors. The directors have appointed Mr. Venturini's father as the general manager of the corporation. As president, Mr. Venturini participates in policy decisions and has the authority to sign corporate documents. He is also involved in discussions regarding the acquisition and terms of leases. Mr. Venturini's father, as general manager, is authorized to negotiate and execute leases and other joint ventures or partnerships, as appropriate. Mr. Venturini's father also has the authority and responsibility for carrying out the corporation's day to day activities.

VAI's fiscal calendar begins in March. During its first profitable year, 1983-84, VAI had gross revenues of \$74,366 and net revenues of \$25,345. The source of these revenues was the provision of management and consulting services to investors in the limited partnerships or joint ventures. VAI made its first discovery of oil earlier this year; to date, no gas has been discovered. Since April 1984, VAI has received, and expects to continue to receive for the remainder of the calendar year income in the amount of \$2,000 to \$3,000 per month from sale of the oil to Shell Oil Company. Assuming no further discoveries are made, Mr. Venturini can expect to receive distributions totaling between \$5,000 and \$10,000 during the 1984 calendar year. Were additional oil to be discovered, Shell is likely to be VAI's primary customer; Pacific Gas and Electric would be the most likely buyer of any gas discovered.

For the record, we note that Mr. Venturini previously held an interest in the Sinco Oil Corporation, a publicly held company engaged in drilling for and producing oil and gas resources in Northern California and in leasing lands for the purpose of developing oil and gas leases. On April 20, 1977, the Board requested that the Commission issue an opinion as to whether the use of a blind trust agreement provided a satisfactory alternative to disqualification under the Political Reform Act. On May 10, 1977, the Commission agreed to issue a draft opinion. The opinion was, however, never formally released; a letter dated February 23, 1978 indicated that the Commission had voted to dismiss the opinion request because it had decided to issue regulations regarding blind trusts.

## II. AUTHORITY OF THE AIR RESOURCES BOARD AND LOCAL AIR POLLUTION CONTROL DISTRICTS

Division 26 of the Health and Safety Code vests in local air pollution control districts the primary responsibility for the control of air pollution from nonvehicular sources, including activities associated with oil and gas exploration and production (Health and Safety Code Sections 39002 and 40001).<sup>1/</sup> To carry out this responsibility, the districts are directed to adopt and enforce rules and regulations to achieve and maintain state ambient air quality standards, to enforce all applicable provisions of state law and to endeavor to achieve and maintain federal ambient air quality standards (Section 40002).

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1. All statutory references are to the Health and Safety Code unless otherwise indicated.

The Health and Safety Code vests in the state board primary responsibility for the control of air pollution from vehicular sources (Sections 39002 and 39500). The Health and Safety Code also makes the state board responsible for coordinating efforts to attain and maintain ambient air quality standards (Section 39003), and directs it to undertake air pollution control activities in any area wherein it determines that a local or regional authority has failed to meet its responsibilities (Section 39002; see Sections 41500-41507 and 41650-41652). The state board is responsible for the preparation of the State Implementation Plan (SIP) required by the federal Clean Air Act (42 U.S.C. Section 7401 et seq.), and in this capacity reviews and submits to the federal Environmental Protection Agency rules adopted by local districts for inclusion in the SIP (Section 39602). The staff of the state board also works directly with air pollution control districts in the development of regulations and in the evaluation of control technology which may be required to meet the requirements of state law and the Clean Air Act. Additionally, the state board comments on and reviews permits, regulations and variances issued by local districts, and has oversight authority with regard to these district activities (Sections 41500, 41504, 41505, and 42360-42363).

Under this statutory scheme, VAI must comply with applicable district rules, regulations and orders, including authority to construct and permit to operate requirements, and, in addition, is potentially subject to direct regulation by the state board pursuant to its statutory oversight authority. VAI's customers (i.e., refiners and other stationary sources utilizing oil or gas) and competitors in California are also subject to the authority of the state board and of the local air pollution control districts.

### III. ORGANIZATION OF THE ARB

The powers of the Air Resources Board are vested in a seven-member board, and are subject to delegation to the Board's Executive Officer, who in turn may delegate his responsibilities to members of the Board's staff. The staff of the Board is divided into eight divisions, each of which is supervised by a division chief. The division chiefs are responsible for carrying out the duties of the Air Resources Board, within the policy and framework established by, and pursuant to direction from, the Board, and, by delegation from the Board, the Executive Officer. When the exercise of these responsibilities raises policy or other

significant issues, the activities of the division are reviewed by and subject to the direction of the Executive Office. More specifically, where Mr. Venturini encounters such issues, he is responsible for bringing them to the attention of the Deputy Executive Officer. Issues which affect the decision to undertake a particular activity may be discussed orally or communicated in writing. Documents, written comments, or other written materials involving policy or other significant issues must be reviewed and receive approval from the Executive Office prior to their release. Other activities are subject generally to oversight and supervision by the Executive Office. As noted above, Mr. Venturini is currently Chief of the Stationary Source Division (SSD) of the Air Resources Board. Within this division are the Engineering Evaluation Branch, the Strategy Assessment Branch, the Toxic Pollutants Branch and the Project Review Branch.

#### IV. DISCUSSION

Against the background provided above, we now discuss the specific activities in which Mr. Venturini is involved at the ARB which may affect VAI. All of these activities are subject to review by the Executive Office as described above regardless of whether that review is specifically noted in the discussion.

##### Development of Suggested Control Measures

Among the activities of SSD is participation in the development of suggested control measures (SCMs) for stationary sources of air pollution. Proposed SCMs are developed by an ARB/CAPCOA (California Air Pollution Control Officers Association) Technical Review Group (TRG) in which the ARB participates as a member. Once the TRG reaches a consensus on a proposed SCM, it is taken to the Board for consideration. If approved/endorsed by the Board, an SCM is forwarded to local districts for consideration for regulatory adoption. The TRG's activities also include research related to rule development.

The ARB's representative to the TRG is a voting member of this body and, in addition, serves as its secretary. Mr. Venturini does not himself sit as the ARB's representative to the TRG; he delegates this responsibility to a member of his staff. At this time, the Assistant Chief of SSD serves as the delegate. Mr. Venturini provides input to and maintains the authority to review and direct the participation of the designated representative. Mr. Venturini may also designate another person to serve as the ARB representative.

It is within the purview of the TRG to develop SCMS which would, if adopted by local districts, regulate oil and gas exploration and production facilities and activities, including

those conducted by VAI. The TRG may also conduct research regarding these sources. Districts may also develop and adopt rules and regulations other than those developed by the TRG to regulate local sources of air pollution. The ARB's role in the adoption of SCMs or rules developed independently by local districts is discussed below at page 9.

#### Outer Continental Shelf Oil Activities

Mr. Venturini is involved in ARB activities with respect to Outer Continental Shelf (OCS) oil exploration and production. OCS exploration and production facilities within three miles of the coast are subject to district regulations, including permit requirements. In accordance with the statutory scheme outlined above, the ARB reviews and comments on district actions and may, pursuant to its oversight authority, directly regulate these sources. Facilities beyond the three-mile limit are subject to federal authority. The ARB submits comments to and negotiates with federal authorities regarding the regulation of such sources and is involved in litigation with respect to OCS development. In this area, Mr. Venturini's division is involved in research and other ARB activities, including evaluation of air pollution control technology. Mr. Venturini's direct involvement includes participation in meetings, the making of recommendations to the Chairman of the Board and to the ARB's Executive Office, briefing and discussing OCS matters with Board members, and allocating SSD staff and resources.

At this time, most OCS technology is not considered to be directly applicable to onshore oil activities, and VAI would, therefore, generally not stand to be affected by the ARB's technological research in the OCS area. ARB activities in this area could affect VAI only if technology were developed which could apply to onshore sources and local districts adopted regulations or imposed permit conditions requiring the use of such technology, or if the cost of technology required for offshore sources were substantial enough to affect market prices. Technology requirements could result in expenditures on the part of Shell, a source of income to VAI but, because of market factors, may not affect its profitability.

#### Review of District Permits

SSD participates in district reviews of applications for projects and permits regarding stationary sources, including oil and gas facilities. Assistance is provided to both districts and applicants. District actions on applications for projects and permits for onshore oil and gas sources have the potential to affect competition. Also, permit conditions may affect operating costs and, hence, have the potential to affect market prices. In addition, a district's determination of best available control

technology or other applicable levels of control technology for other permitted onshore oil and gas exploration and production operations could be a factor in the determination of the technology required for VAI. Mr. Venturini makes decisions as to whether and to what extent the ARB will participate in a district's review of a particular project or permit application and approves comments and analyses prepared by his staff. As discussed above, if these documents raise significant issues, they are also reviewed by the ARB's Executive Office.

#### Research Proposals

SSD comments on ARB Research Division proposals and makes requests to the Research Division to perform or contract for research. Mr. Venturini makes decisions regarding such comments and requests to the Research Division based on the needs he sees in SSD. Under the organizational framework of the ARB, limited research activities in support of ongoing division functions may be carried out by the Research Division at the request of a division chief. Decisions of the Research Division regarding such research are subject to review and oversight by the Executive Office as described above. In contrast, all specifically identified research projects, generally of a long-term nature, funded by the state, including both those conducted by the ARB and those conducted under contract with the ARB, must be reviewed by a nine-member Research Screening Committee appointed by the Board pursuant to Section 39705. The Committee provides advice and recommendations to the Board, which determines whether a project is to be carried out.

Research regarding particular sources of air pollution could have an impact on the availability of information on which regulations could be based, and, therefore, potentially affect the extent to which these sources are regulated. In particular, a decision not to request research in a given area may have the effect of impeding development of a basis for regulatory action. We note, however, with respect to Mr. Venturini's involvement in this area that a divisional request is only one of the avenues by which the Research Division determines the need for research in a given area. In addition, the results of a research project are unpredictable at the time a request is made. These factors apply as well to SSD comments on proposed contracts with outside entities for research and services.

#### Activities Related to Toxic Air Contaminants

Mr. Venturini supervises his division's work on the implementation of AB 1807 (Chapter 3.5 (commencing with Section 39650), Part 1, Division 26 of the Health and Safety Code), which provides for the evaluation of substances which may be toxic air

contaminants and for the listing and control of those substances determined to be toxic air contaminants. Pursuant to AB 1807, each substance must be evaluated by the Department of Health Services and the ARB, and those evaluations must be reviewed by an independent Scientific Review Panel before a substance may be identified by the Board, by regulation, as a toxic air contaminant. After a substance has been identified as a toxic air contaminant, the state board must adopt airborne toxic control measures. Local districts must, within a specified time period, adopt regulations enacting control measures at least as stringent as those adopted by the state board.

The Toxic Pollutants Branch prioritizes substances for review; Mr. Venturini supervises this process. Mr. Venturini also assigns projects to and makes decisions with regard to projects proposed by the Toxic Pollutants Branch, reviews and evaluates the research data compiled by and the reports and conclusions of the Branch, makes recommendations to the Executive Office regarding the implementation of AB 1807, and represents his division in Board briefings on matters dealing with toxic air contaminants. The identification phase of the Board's toxics program involves several divisions, and all significant aspects of the program are directed by a Deputy Executive Officer. SSD will also play a primary role in the development of SCMs relating to the control of toxic substances. (The role of SCMs in district regulations has been discussed above.) Activities in this area could affect VAI if any of the compounds under review or being considered for review are emitted in oil or gas exploration and production activities.

#### Source Testing

SSD initiates source testing and conducts such testing at the request of air pollution control districts to monitor emissions and to compile an inventory of the sources of and the nature and quantity of air pollution. SSD also tests pollution control equipment for research and development purposes. Tested sources may include oil and gas exploration and production facilities and their customers. Research and development testing may affect future regulatory or permit decisions with respect to the level of required technology. The decision to conduct source and research and development testing is made within the branches of SSD. Mr. Venturini may review and uphold or overrule branch decisions to conduct such testing.

#### Pending Legislation

SSD reviews and analyzes pending legislation and makes recommendations regarding the ARB's development of legislative proposals. These activities are subject to Mr. Venturini's

review. Contact with the Legislature takes place only with the approval of the Executive Office. The ARB's position on legislation involves numerous reviews, by the Deputy Executive Officer, the Executive Officer, the Board Chairman, and the Governor's Office. Additionally, legislative proposals are subject to comment by all ARB divisions.

#### District Rules and Regulations

Mr. Venturini's division comments to districts with respect to proposed rules and regulations dealing with regulatory matters within SSD's scope of responsibility. Pursuant to Section 40703, a district must provide to the Board the text of a proposed adoption, amendment or repeal 30 days before its public hearing on the proposed regulatory action. Mr. Venturini or branch chiefs within SSD may direct staff to prepare comments on such rules. Mr. Venturini reviews comments prepared pursuant to his direction or by assignment of a branch chief and must approve the substance and presentation of such comments prior to their release. Again, Mr. Venturini's activities in this area are reviewed by the Executive Office if policy or other significant issues are raised. Districts, as explained above, may directly regulate oil and gas facilities, including VAI and its customers and competitors.

#### V. SUMMARY OF QUESTIONS RAISED

In closing, we reiterate the questions we have raised against the background provided above. We seek the Commission's guidance with respect to these general questions as well as the more specific elaborations which follow.

- o In what instances, if any, does Mr. Venturini's role in ARB activities constitute making, participating in making or influencing a government decision? In those instances where intermediate steps, including action by the ARB itself or the board of a local air pollution control district, are necessary to give effect to Mr. Venturini's actions, what is their effect on the character of his actions?
- o Does review by the ARB's Executive Office constitute an intervening substantive review? More generally, what are the necessary elements of an intervening substantive review? In what instances is the Executive Office making a decision rather than performing an intervening substantive review, thereby making Mr. Venturini's role that of participating in the making of a decision or attempting to influence a decision?



- o When does it become reasonably foreseeable that a material financial effect may be attributed to Mr. Venturini's involvement? Where others must act to give Mr. Venturini's action regulatory effect, is his involvement too remote from any possible effect on VAI to make it reasonably foreseeable? To the extent that the results of research or the actions of other governmental bodies are unpredictable, can it be reasonably foreseeable that Mr. Venturini's actions in requesting research or commenting to such bodies could have an effect on VAI? Does the oversight authority of the ARB with respect to districts affect the determination of foreseeability?
- o In determining whether any financial effect on VAI attributed to Mr. Venturini's activities is "material," which of the criteria in Section 18702, Title 2, California Administrative Code, are to be applied?

We note finally that we do not, by this discussion, ourselves draw any conclusion as to whether Mr. Venturini's activities constitute making, participating in making or attempting to influence a government decision, nor as to the likelihood or magnitude of any financial effect on VAI. To the extent that an effect is indicated herein, it is an indication only of a potential effect and is raised only for purposes of this discussion. We also reiterate that, while we have raised particular questions, we seek the Commission's guidance with respect to any other issues it considers pertinent to this matter.

Should you desire any further information, please contact Carrie Small, Staff Counsel, at 322-2884. Thank you for your consideration of this matter.

# State of California



## Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

November 8, 1984

James D. Boyd  
Executive Officer  
Air Resources Board  
P.O. Box 2815  
Sacramento, CA 95812

Re: A-84-281

Dear Mr. Boyd:

Your letter requesting advice under the Political Reform Act has been referred to Diane Maura Fishburn, an attorney in the Legal Division of the Fair Political Practices Commission. If you have any questions about your advice request, you may contact this attorney directly at (916) 322-5901.

In responding to your request for advice, it is necessary for you to forward to the FPPC a copy of the most recent Statement of Economic Interests filed by each official about whom you have requested advice. Please send the Statement(s) to the attention of Ms. Fishburn.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Barbara A. Milman".

Barbara A. Milman  
General Counsel

BAM:plh

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance  
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• • Statements of Economic Interest  
322-6444

February 22, 1985

Peter Venturini, Chief  
Stationary Source Division  
Air Resources Board  
1102 Q Street  
Sacramento, CA 95814

Dear Mr. Venturini:

This letter is sent to confirm our telephone conversation. In view of our advice to you (No. A-84-281), you asked whether you can agree with the other shareholders in Venturini Associates, Incorporated (VAI), that your pro rata share in any one particular partnership or other venture organized by VAI will not exceed 10 percent. Your purpose would be to ensure that sources of income to the partnership will not be considered sources of income to you within the meaning of the Political Reform Act.

I advised you that this would be sufficient to reduce your interest in any partnership or other venture that VAI might organize. So long as your interest in any other business entity does not exceed 10 percent, sources of income to that business entity will not be considered sources of income to you. As I told you on the phone, however, I cannot advise you as to the form or other legal requirements for such an agreement. If I can be of further assistance, please feel free to contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane Maura Fishburn".

Diane Maura Fishburn  
Staff Counsel  
Legal Division

DMF:plh